



U.S. Citizenship
and Immigration
Services

172

FILE:

Office: HARLINGEN, TEXAS

Date: OCT 25 2004

IN RE:

Applicant:

APPLICATION:

Application for Certificate of Citizenship pursuant to Section 301 of the former Immigration and Nationality Act; 8 U.S.C. § 1401.

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the District Director, Harlingen, Texas, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant was born on April 15, 1960, in Mexico. The applicant's mother [REDACTED] was born in Texas on October 16, 1934, and she is a United States citizen. The applicant's father was born in Mexico and he is not a U.S. citizen. The applicant's parents were married on February 23, 1957, in Mexico. The applicant seeks a certificate of citizenship pursuant to section 301 of the Immigration and Nationality Act (the Act); 8 U.S.C. § 1401, based on the claim that she acquired U.S. citizenship at birth through her mother.

The district director found the applicant had failed to establish that her mother was physically present in the United States for ten years prior to the applicant's birth, at least five years of which occurred after her mother reached the age of fourteen. The application was denied accordingly.

On appeal, the applicant asserts that although her mother [REDACTED] was previously unable to remember details pertaining to her physical presence in the United States, Ms. Hernandez is now able to remember the details, and has provided affidavit evidence establishing that she was physically present in the United States for the requisite time period under section 301 of the Act.

"The applicable law for transmitting citizenship to a child born abroad when one parent is a U.S. citizen is the statute that was in effect at the time of the child's birth." *Chau v. Immigration and Naturalization Service*, 247 F.3d 1026, 1029 (9th Cir., 2000) (citations omitted). The applicant in this case was born in Mexico in 1960. The version of section 301 of the Act that was in effect at that time (section 301(a)(7)) therefore controls her claim to derivative citizenship.

In order to derive citizenship pursuant to section 301(a)(7) of the former Immigration and Nationality Act (former Act), it must be established that when the child was born, the U.S. citizen parent was physically present in the U.S. or its outlying possession for ten years, at least five of which were after the age of fourteen. *See § 301(a)(7) of the former Act.*

In *Matter of V*, 9 I&N Dec. 558, 560 (BIA 1962), the Board of Immigration Appeals determined that the term "physical presence" meant "continuous physical presence" or "residence" in the United States. In order to meet the physical presence requirements as set forth in section 301(a)(7) of the former Act, the applicant must establish that her mother was physically present in the U.S. for ten years between October 16, 1934 and April 15, 1960, and that five of those years were after October 16, 1948, when her mother turned fourteen.

The evidence pertaining to Ms. Hernandez's physical presence in the United States between October 16, 1934 and April 15, 1960, consists of Ms. Hernandez's birth certificate and a September 20, 2003, affidavit written by the [REDACTED]

[REDACTED] affidavit states that she was born and raised in Ranches, Texas, and that at the age of fourteen she lived and worked for [REDACTED] and [REDACTED] Roma, Texas. [REDACTED] states that [REDACTED] are no longer alive, but that their son [REDACTED] remembers her. [REDACTED] states that she began work as a migrant field worker in 1954, and that after her 1957 marriage in Mexico, she continued to reside predominantly in the United States.

The AAO finds that [REDACTED] birth certificate establishes that she was physically present in the U.S.

in 1934. The AAO finds, however, that the claims made in Ms. Hernandez's affidavit are uncorroborated by any evidence or information in the record. Moreover, the AAO finds that Ms. Hernandez's affidavit is vague and lacks basic and material details regarding the exact dates and places that she resided in the United States. Ms. Hernandez's affidavit is therefore found to lack probative value. Accordingly, the AAO finds that the applicant has failed to establish her mother was physically present in the United States for the requisite time period set forth under section 301(a)(7) of the former Act.

8 C.F.R. 341.2(c) states that the burden of proof shall be on the claimant to establish the claimed citizenship by a preponderance of the evidence. The applicant has not met her burden, and the appeal will be dismissed.

ORDER: The appeal is dismissed.